

## Digital Rights in Asia: Rethinking Regional and International Agenda

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### Introduction

After successive waves of digital technology-associated changes in Asia, and several national moves to regulate internet communications and content, there is a renewed sense of the need to interrogate the new sets of transactions and arrangements being established across many arenas under the name of the ‘digital’. An emphasis on digital technologies as a driver of economic efficiencies and innovations is engendering substantive changes in commerce, government, social and cultural arenas. In the commercial domain, the emergence of a platform model for digital transactions centred on virtual marketplaces is implicated in the wide-ranging changes to the nature of work, consumption and everyday exchange. In the domain of governance, the digitisation of services, security, compliance and enforcement processes is reconfiguring everyday transactions between citizens and the state. The expansion of the digital as the locus of social communication, largely through mobile technologies, has furnished a new set of dynamics in democratic politics, popular culture, personal interaction and public speech.

These wide-reaching developments touch upon almost every aspect of life, and necessarily transform the social, economic and cultural transactions that take place in private and public exchanges. In aggregation, the combination of technological affordances, new information alliances and relationships, and strategic, networked agency brings about novel concerns, challenges and debates regarding the social contracts, explicit and implicit, upon which emerging digital societies are being organised. In the West, these debates have focused for example, around the Facebook/Cambridge Analytica scandal, and the banning of alt-right commentator Alex Jones from social media platforms. Yet despite the range, gravity, and importance of these issues and the sheer effort of innovation and analysis being given to the digital sector, it is not clear that the intrinsic challenges presented by digital transformations to the moral principles of society and human life (Horst and Foster 2018) are receiving the attention that they merit. Certainly they require reconception in the Asian context, with the rapid growth in mobile and broadband connections in India, South East Asia and China underpinning significant changes in markets, governments and societies.

While one issue, symptomatic risk, or another may give rise to set of public concerns that play out in digital forums, the foundational principles of human rights are yet to exert sufficiently coherent influence upon the general and global conceptions of digital rights. It is fair to say that the rights agenda has been largely reactive, following the evolution of socio-technical interfaces as and when issues arise, for example in India around the Aadhar biometric identification program or Whatsapp mobilised political violence. The advent of concerns such as privacy, subsistence and public safety should not, however, be considered as arising merely from the affordances of digital technologies. It is also important to recognise that the new transactional relationships emerging in the digital domain come into

being as a consequence of deliberate intent in design and execution, as well as unintended effects shaped by use and abuse.

Across Asia, the digital turn is being pressed into service in and across various countries in order to gather together and mark regional, national, and sub-national projects, such as *Digital India* and China's *Internet Plus*, to mention just two of the biggest and most prominent instances (Athique, Parthasarathi, and Srinivas 2018, Hong, 2017, Kar, Sinha and Gupta 2018, Shi 2018), but also shaped by advent of global commercial plays such as Facebook's Free Basics or Internet.org project.). These national and international 'digital agendas' are unfolding across the backdrop of the complex evolution of social, mobile, locative, and other digital media platforms, technologies, and cultures, deeply yet unevenly underpinning everyday lives in the region (Digital Asia Hub 2016, Hjorth and Khoo 2016, Jin, 2017, Jurriens and Tapsell, 2017, Nielsen, Rossiter and Samaddar 2018, Niranjana and Xiaoming, 2015). In the context of such overarching political and economic visions, it is evident that we need to conceive of a similarly comprehensive agenda for the role and rights of citizens.

In the past few years, we have already witnessed an expanding set of issues concerning the nature, needs and demands for digital rights across different Asian locations. At the risk of overstating their internal coherence, we can group these debates under three areas. Firstly, as they pertain to the role and responsibilities of the state in digital spaces (Sinpeng 2013). Over the past two decades, international human rights debates on human rights have focussed on the implications of national and cross-border security, cybersecurity, information warfare and terrorism in various forms and settings (Chatfield et al. 2015, Digital Rights Foundation 2018, Shah 2007). Meanwhile the extension of digital modes of governance in other domains, and largely within states, has led to the creation of new systems of social control and governmentality via Internet, social media, algorithms and automation, ranking, rating and enumeration of citizens. These developments raise critical questions regarding democracy and equality in digital policy agendas (Gurumurthy, Chami, and Thomas, 2016, Shah, 2013). Intervention in these domains, in turn, requires us to consider fundamental questions of justice and rights in systems of digital media (Qiu 2009 and 2016). Commonly, engagements in these debates, albeit often uneven and unsatisfactory are between institutions of state (both national and international) and a broad range of non-governmental organisations (NGOs) involved in the advocacy of digital rights conceived across the evolution of the Internet era.

This civil society mobilisation of civil society has traditionally centred upon a second set of issues. The central discourses tend to regard digital media as core to the maintenance of public sphere and/or commons, which subsequently serves as a guiding principle in a variety of approaches to net neutrality, freedom of speech and expression, citizen participation, access to information and, at the present moment, towards data privacy and human rights (Greenleaf 2014). Within the public sphere, such debates also encompass mediated interactions between citizens. Critical rights issues have emerged around the profusion of hate speech, abuse, harassment, and other violence online, and the use of digital networks by both state and non-state actors to organise and incite physical attacks for political purposes (Stecklow 2018, George 2015). Our attention has also been drawn to the different gendered implications of emerging socio-technical digital systems, especially, for example, in relation to censorship, surveillance, and security) (Jensen 2012). These civil society concerns with public safety and well-being also increasingly triangulate with a third area of debates arising from the emerging centrality of digital technologies to accessing economic opportunities and, more broadly, from the expansive power and agency of technology corporations to determine

the forms of our social and economic transactions. Here, the pursuit of social and economic innovation via the digital necessitates a debate on our economic rights, to consider challenges for equality, fairness, and participation in digital economy (Azali 2017, Gray and Suri 2019). Currently, our attention is given to the nature and conditions of new forms of digital work and labour (such as the ‘gig economy’) and to the underlying power relations and governance of digital platforms within and across national borders (Ford and Honan 2017, Jin 2015, Lee 2012).

In this chapter, we seek to reflect upon the complex demands of providing a coherent response to challenges across these three domains. We do so in order to open up and encourage consideration of the appropriate conception and agenda for digital rights and associated governance in Asia. We do so from the perspective of an Australian location in the Asian region (Daly 2016), and informed by our interdisciplinary research on digital rights (et al. 2017). Our starting point is a dissatisfaction with the framing, assumptions, and norms of digital rights globally (Karppinen 2017 and 2017b). At the risk of simplification, we will argue that the dominant ways of framing digital rights and governance continue to be modelled on a limited repertoire of Western experiences and concepts of digital technology (cf. Lim and Soriano 2016, McLelland, Yu and Goggin 2018), rights, and freedom (cf. Kelly and Reid 1998). We see such dominant accounts underpinning global reference points such as the widely utilized *Freedom on the Net* annual report by the US-based NGO Freedom House, which in its 2017 sorted the world’s Internet population into: 23% free; 28% partly free; and 36% not free (leaving aside the 13% globally it was not able to assess) (Freedom House 2017, but see also the fuller, better contextualized account in UNESCO 2018). Of the Asian countries evaluated for the 2017 report only three were rated as ‘free’: Philippines, Japan, and Australia (Freedom House 2017: 23). In the context of this chapter, an immediate question is the extent to which these notions of freedoms correspond with the principles and exercise of rights.

### **Digital Rights in Asia**

Clearly, rights must be established in order that they can be freely exercised and cannot be imposed under purely external suppositions. A further, necessary, consideration is where certain freedoms impinge upon the rights of others, prompting us to bear in mind whose freedoms are being defined and privileged and whose perspective is determining the nature of that evaluation. In an international context, Asian digital rights debates are often cast in the negative, featuring as dystopian, ‘worst’ or ‘limit cases, where Internet rights are being breached and Internet freedoms trampled upon. Against this backdrop we draw attention to the narrow and stereotypical representations of Asian digital rights as these ‘imaginaries’ circulate in global discussions of digital technology transformations and digital citizenship (McCosker, Vivienne and Johns, 2017, Hintz, Dencik, Wahl-Jorgensen, 2018). As we outline, study of Asian digital rights has considerable potential to inform a full understanding of the development and dynamics of digital technology use in the region, and to be a rich resource for conceptualizing digital rights, justice, and freedom struggles internationally.

The Asia context demonstrates a complex set of debates of social, economic, political and geopolitical rights, all of which are now becoming interlaced with the rapid expansion of the digital across the region, thereby converging these various concerns in important ways. As noted by Adrian Athique in his suggestive introduction to this volume (Athique 2019), there is a new geography to the digital unfolding across the sheer scale and diversity of Asian locations and interregional dynamics. Enormous economic and cultural investments in

digital infrastructures across Asia underpin global as well as regional economies and societies. At the same time, how these new platforms, markets, and capabilities unfold pivots on the ways that users, households, workers, governmental and civil society actors, business people, scientists, and technology actors imagine and shape these technical and social forms. Thus the emergence of digital rights concepts, practices, and struggles engages complex dynamics across the disparity of political systems, languages, cultures, religions, and local traditions in the region.

Consider some elements of Asian societies that bear decisively on rights. The ‘Asian values’ discourse accents notions of individualism versus collective identity, in a way that is often rather homogenizing in terms of differences when it comes to rights (Avonius and Kingsbury 2008, Lim and Soriano 2016, Price and Stremlau 2018, Visweswaran 2010). Consider, for instance, the centrality of religious beliefs to rights in South and Southeast Asia, as opposed to their absence in Northeast Asia. Alongside such claims to the primacy of collective identities, underpinned by recourse to cultural specificity and particularity, we need also acknowledge the real internal diversity of most Asian polities (Goh 2011). We see a strong manifestation of the principle of self-determination remaining marked by intense cultural diversity within communities. In a number of countries, intense economic growth brings pressures in addressing the huge social disparities, characterized by uneven development leaving large numbers of people below the poverty line. In legal and political terms, there are different forms of constitutionalism conceived within the dawning of the United Nations and heyday of the principles of the Universal Declaration of Human Rights and ensuing six or so decades of development of human rights instruments, now being reconfigured, displaced, or shunted aside in the wake of political and media change (Sen and Lee, 2008). We see, moreover, an emerging set of intra-regional relationships alongside broader international linkages, with many Asian actors contesting questions of rights within international systems and bodies. This further complicates matters, adding more layers to a history of constraints of free expression despite constitutional provisions in most cases.

In order to address this larger set of regional and local dynamics, there is a need to develop much more sophisticated frameworks on rights and governance in Asia, that comprehend and engage with the complex, specific contexts of evolution of digital technologies across various countries and settings (as well as appreciating intra-regional, cross-regional, and international transactions) (Erni and Chua 2005, Goggin and McLelland, 2009 and 2017). This is consistent with international efforts to offer a new framework for putting media and communications struggles, justice, and rights at the heart of social progress (Couldry et al. 2018). In particular, we wish to highlight the importance of unpacking, analyzing, and engaging with the various conceptions, movements, and arena of digital rights across the full diversity of Asian locations, and especially perspectives, practices, and meanings from citizen and user perspectives. This also entails taking account of the inter-Asian transactions and borrowings across digital and cultural histories and models of rights and governance (Wang and Liu 2018).

### **The Global Emergence of Digital Rights**

The notion of rights has a long, complex, and rich set of histories, based in politics, law, philosophy and ethics. Following the 70<sup>th</sup> anniversary of the United Nations Universal Declaration of Human Rights (UDHR), it is evident that the very idea of rights is still strongly contested from a wide range of perspectives (Moyn 2018). Acknowledging these heritages and debates, we do believe that rights remain important. We take a broad, pluralistic

approach to investigating digital rights that encompasses: rights explicitly set out or recognized in law, policy, and regulation; rights ideas and practices developed and asserted by a wide range of movements, organizations, and individuals (Erni, 2011); rights that extend beyond traditional frameworks of states, national, regional, and international communities of countries.

The recognition of certain rights and not others is shaped by cultural, social, political, and linguistic dynamics, as well as particular contexts and events (Eckel and Moyn 2014, Hunt 2007, Moyn 2010, Gregg 2012). Markets, technology design and implementation, social innovation and option, outcomes for consumers, citizens, civil society, business, and institutions are often highly influenced by the kinds of rights set out in international frameworks, and shaped and policed (or not) by institutions, such as the United Nations, the World Trade Organization (WTO) and the World Intellectual Property Organization (WIPO), as well as domestic law, courts, and regulation. In relation to digital technologies and platforms, we also see the emergence of non-state-based governance and regulation arrangements (Cole, Fabbrini and Schulhofer 2017, Gillespie, 2018, Tusikov 2017), which hinge on either self- or co-regulatory codes of practice, or the policies of large corporate or organization actors, to implicitly define, moderate, and manage particular behaviours. These arrangements have occasioned wide-ranging debates about the appropriate legal concepts and frameworks to frame such dynamic and emerging governance and regulatory institutions, settings, efforts, and work — such as the project of ‘digital constitutionalism’ (Suzor 2018).

Over the last three decades the emergence of digital, networked technologies into this rights scenario has generated new rights scenarios and propositions. Consider, for instance, the expansion of copyright in the digital domain, and net neutrality (Daly 2016b), new claims such as the right to be forgotten and the right to inclusive design (Boys 2014, Bates, Imrie and Kullman 2016, Brock 2016, Postigo 2012), or demands such as the right to transparency in the operation of algorithms, artificial intelligence, the Internet of Things, and smart or connected cities, as well as ways to mitigate automated inequality, and to ensure data justice (AHRC 2018, Bunz & Meikle 2017 Dencik, Hintz and Cable 2016, Eubanks 2017, Pasquale 2015).

These new agendas underscore the point that the scope and nature of digital rights is in pressing need of clarification (Karppinen, 2017a and 2017b). As digital rights are being reshaped, there is an opportunity to position them front and centre in on contemporary human rights agenda. This is important given that conventional human rights groups and institutions have been relatively slow to pay sufficient attention to the imperative for rights struggles and concepts that digital technologies represent. Broadly speaking, we see the present conjuncture being one in which digital rights can be brought into the fold of human and others’ rights debates and struggles; and that the challenges and implications of digital rights are grappled with by the full range of rights institutions and actors.

Institutional recognition of, and support for, such digital rights has tended to come first from organizations focussing on digital technology governance issues, such as the Internet Society and its various regional chapters, or the longrunning Association for Progressive Communications (APC). Subsequently, there has been marked growth in new advocacy organizations, enabled by digital platforms. Forerunner groups include: the US-based Electronic Frontiers Foundation (EFF), various activist, grassroots-based movements, including Free, Libre, and Open Software (FLOSS), CryptoParties, Pirate Parties, Creative Commons and digital commons groups, community informatics and community technology

movements, and research organizations. Organizations with an explicit digital rights focus and identity include the leading international group, Access Now, established in 2009.

In the Asian region, digital rights groups are flourishing. So we find a wide range of national groups such as Pakistan's Digital Rights Foundation, Thai Netizen Network, or Australia's Digital Rights Watch (Digital Rights Watch 2018). There are journalists and bloggers in the vanguard of freedom of expression struggles (stretching back to at least the heyday of online news pioneer Malaysiakini), long term players online community networks, the Internet, and capability building such as the Association for Progressive Communications (APC), civil society groups engaged with, or premised upon, digital platforms, including Internet Democracy Project (based in New Delhi), activist groups such as Australian-based GetUp!, Internet and society research centres and thinktanks (often affiliated with the Global Network of Internet and Society Research Centers), such as the longrunning Centre for Internet & Society in Bangalore or the more recent Hong Kong-based Digital Asia Hub, community development and social justice NGOs such as IT for Change (also based in Bangalore), and new civil society-corporate alliances such as the Australian Digital Inclusion Alliance, established in 2017. Across Asia, a wide range of other rights and justice organizations have also embraced digital rights issues, including the strong press freedom groups such as Southeast Asian Press Alliance (SEPA) and SAFENet (Southeast Asia Freedom of Expression Network, based in Indonesia). A sign of the times was the October 2017 COCONET: Southeast Asia Digital Rights Camp, organized by Engage Media, APC, SEPA, and others (Wolf 2017).

Given the number and significance of organizations active in the field, the question of the relative role of international or western groups versus Asian counterparts in advocacy for digital rights in Asia is a very interesting one. Fair to say, however, that the ferment in the field in Asian digital rights deserves further attention and support from the wider global community, as we shall now discuss.

### **Imaginary of Asian Digital Rights**

This thumbnail sketch of the emergence of digital rights helps set the scene for a discussion of Asian digital rights. Clearly Asian actors and organizations have figured prominently in the creation of digital rights, as this brief account reveals. Yet this involvement belies two key issues: 1) digital rights, it can be argued, are still imagined and configured according to a narrow set of social experiences and identities, and particular histories, as well as particular policy and legal concepts and frameworks; something revealed by the strong emphasis given to 'net neutrality' and 'Internet freedom', both concepts originating from, and deeply coloured by the US normative contexts; 2) insufficient attention is still paid to Asian digital practices, rights conceptions and movements, and institutional settings, and frameworks.

Consider, for instance, that the reflex frameworks concerning digital technology internationally, but especially it seems in the Asia Pacific region, have to do with three main issues in particular: trade and markets (Velut, et al., 2017); security, cybersecurity, and anti-terrorism; and the related issue of cyber or e-safety. These are areas, we would suggest, where governments are putting significant resources into consolidating frameworks for regional cooperation and action, and where industry, and other actors, are being encouraged to join in partnerships. In contrast, issues of access and inclusion is one where regional frameworks have been weak, despite international efforts from governments, industry, and civil society, to drive better connectivity and access — for instance, in the follow-up work

from World Summit on the Information Society, the Sustainable Development Goals (Servaes, 2017), or the UNESCO Internet Indicators project (UNESCO, 2018). In terms of digital rights, the situation is worse still, and there appears to be a real gap in regional frameworks and action from governments (Aaronson, 2018). At a workshop of civil society actors and researchers on Asian digital rights convened by the authors in April 2018 (Sydney Ideas 2018), there were deep concerns expressed about the equity, justice and transparency of rolling out large scale government data gathering and monitoring programs, entailed in India's Aadhaar and also China's social credit system — the 'beta-testing' of intrusive technologies as one participant put it, in the absence of rights frameworks and with information asymmetries and other power inequalities making citizen protest or pushback difficult. Participants noted such programs, including the integration of predictive technologies for social control, could be tied to aid and development goals and to significant private/public partnerships, which introduces political-economic pressures to move on them regardless of their social impacts.

If we start with the regional level, it could be suggested that the lag in initiatives on digital rights by Asia Pacific governments is not surprising, given the stakes it represents. Like elsewhere in the world, most countries in Asia have seen ongoing conflicts between citizens asserting aspects of digital rights, especially freedom of expression, as key to political and social participation, versus governments regulating to foreclose or curtail exercise of such rights (Berenshot, Nordholt, and Bakker, 2017). The stakes become higher, for these governments as well as the governed, with the positioning of digital technology policy at the centre of whole-of-society, economy, and polity plans and futures. Across Asian governments, there has also been significant if varying levels of interest in digital innovation agendas — yet it is clear that these require society-wide participation premised upon trust, and in turn, adequate and feasible rights (Greenleaf, 2014, Stagars, 2016). If we are to pursue this line of thought further, we think it leads to a much deeper challenge — the urgent need to reorient global digital rights discussions via a much more extensive and systematic engagement with Asian digital rights (cf. Chen 2010).

### **Reorienting Digital Rights in/from Asia**

A wide range of Asian countries have consistently been in the vanguard of the development of technology, from telecommunications and Internet through to mobile, locative media, social media and digital platforms. In Southeast Asia, for instance, we might recall Indonesian plans for national development, telecommunications, and television, in the form of the Palapa satellite (Kitley, 2000, Thomas, 2005, Triastuti, 2017), Singapore's *Vision of an Intelligent Island IT 2000* (Chun, 1997, NCB, 1992), and Malaysia's *Multimedia Super Corridor* and the new centre Cyberjaya (Bunnell, 2004, Kobie, 2016). In East Asia, pioneering efforts also go back various decades, with celebrated cases being Japan's 1972 *Plan for the Information Society* and Korea's broadband development (Lee 2012) At the present time across Asia, as this volume bears out, there is significant capital, social, and political investment being put into Artificial Intelligence (AI), algorithms, and data, and the various associated and influential social imaginaries of technology. Against this backdrop, we still find particular kinds of global imaginaries of Asia (Wang, 2007) in relation to digital technologies, rights, and governance. There are long, tangled histories of specific socio-technical developments being circulated globally in particular ways. Consider, for instance, the way Singapore's intelligent island figured as a dystopian panopticon (BBC, 1990, Sandford, 1993). Or the manner in which the rise and rise of China's Internet was closely

associated with the accounts of the ‘Great Firewall’, Internet filtering, and the ground zero of the extirpation of Internet freedom.

More recently, we see global imaginaries of digital China featuring particular representations of the highly problematic social credit system as, for instance, ‘Big Data Meets Big Brother’ (Botsman, 2017) often compared to the ‘Nosedive’ episode of the TV show *Black Mirror* (Locker, 2018). As well as the fact that such updated ‘techno-orientalist’ imaginaries greatly simplify the complex and exceedingly worrying new relations between state, technology corporations, and society (Jefferson, 2018), such visions crowd out the bandwidth for other accounts and futures of digital rights. What is rarely foregrounded, for instance, are imaginaries generated by the rich and influential body of work by Asian activists, social movements, policymakers, media and technology actors, and scholars on communication, information, media, and, more recently, digital rights (Thomas, 2011 and 2012). Two resonant examples here come from the Indian context, in the work of the Delhi Sarai group, especially on commons and publics, and from various NGOs and thinktanks on Internet governance, not least in the *Delhi Declaration for a Just and Equitable Internet* (Just Net Coalition, 2014) — not as celebrated or developed perhaps as the Brazilian *Marco Civil* but also an important moment in the social conceptualization of digital rights.

The lack of recognition of, and attention paid, to Asian digital rights is despite efforts to broaden and internationalize evident in ‘international’ digital rights campaigns. An excellent example of this is found in the wide international extension, coverage, and staffing of US-headquartered digital rights organization *Access Now*, well-known for its high-profile work globally including various Asian countries (for instance, it held its premier event *RightsCon* in 2015, as discussed in Postill 2018). John Postill’s *Nerd Politics* (2018) and his earlier work on the localization of the Internet is a key exemplar in theorizing digital politics and activism in situated, contextualized ways, especially drawing upon Asian locations and cultures of digital rights. Postill reminds us the ‘global digital rights space is more heterogeneous, dynamic and messy’, and cannot simply be understood via the dominant liberal versus radical narratives (Postill 2018: 91). He argues that ‘we should still take seriously the cultural heterogeneity of the digital rights space; that is, the divergent histories, ideologies and institutions found in different political cultures’ (Postill 2018: 92). For Postill this cues us to attend to the creative and canny ways in which ‘nerds’ (digital rights actors) ‘translate or “modulate” ... key digital issues in culturally specific ways’, so comprehending the ‘local distinctions’ that enable us to ‘understand the global movement in all its unity and diversity’ (Postill 2018: 92).

## **Conclusion**

In the spirit of this volume, it is important to posit digital rights as a rich and consequential area for digital transactions in Asia. This is especially important if it is the case, as we have contended in this chapter, digital rights are often left off the agenda in the discussion of digital transformations, especially the highly visible, mainstream, official, and authorized discussions. Such theoretical, empirical, comparative, and cross-sectoral work is urgently needed, not least because questions of digital rights and governance are moving beyond earlier, if still pressing issues of freedom of expression to a wider range of privacy, data justice, labour rights, communication rights, governance, and democratization issues, posed by the new platforms (such as sharing and caring economy). Not only are such new Asian and inter-Asia theorisations and practices of rights and governance important in this region



(especially for countries such as Australia), but they stand to help us rethink and confront the impasses and political and conceptual problems with dominant global digital rights thinking.

In turn, this project of reimagining and mainstreaming digital rights conceptions, practices, and norms makes a powerful contribution to advancing key issues and challenges arising in contemporary Asia. The expansion of digital transactions across Asia requires more comprehensive and considered rights frameworks to guarantee social justice, citizenship and political participation, as well the economic benefits of the many initiatives underway. Otherwise the danger is that digital transformations can hinder rather than advance social progress.

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